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[ORIGINAL CIVIL JURISDICDICTION]

McELWAINE, C.J.

October 29, 1938.

IN RE TENGKU ZAINAB BINTE SULTAN ALI.

[SINGAPORE BANKRUPTCY No. 17 of 1938].

The Sultan Hussain Ordinance (Cap. 265), s. 5—Payment under Ordinance not assignable.

Section 5 of the Sultan Hussain Ordinance has no application in bankruptcy when a pensioner under the Ordinance has been adjudicated bankrupt. The appropriation of unpaid Government pensions for the payment of a bankrupt's debts is regulated by s. 55, sub-s. 3 of the Bankruptcy Ordinance. The Court has power to make an Order under that section directing that a portion of the money payable by the Government to the bankrupt be paid to the Official Assignee to be distributed among the bankrupt's creditors. This provision applies in the case of a member of the family of the late Sultan Hussain who receives an annual pension under the provisions of ss. 3 and 4 of the Sultan Hussain Ordinance. Section 55, sub. s. 2 of the Bankruptcy Ordinance has no application to pensions. So the consent of a senior Crown officer is not necessary.

MOTION.

Ambrose, Assistant Official Assignee for the Official Assignee in support of the Motion.

Cur. Adv. Vult.

McELWAINE, C·J.—The bankrupt is a member of the family of the late Sultan Hussain and as such has been in receipt of annual sums paid under the Sultan Hussain Ordinance (Chapter 265).

The payment is made by the Crown to the family of the late Sultan Hussain in such manner and in such proportions as the Governor in Council determines.

Section 5 of the Ordinance enacts "the sums payable to the family of the late Sultan Hussain under this Ordinance shall not be assignable or transferable or liable to be attached, sequestrated or levied upon for or in respect of any debt or claim whatever."

There is no difference in substance between this section and s. 15 of the Pensions Ordinance (Chapter 78). The section is also similar to s. 20, sub-s. 2 of the Municipal Ordinance (Chapter 133) and to s. 22, sub-s. 2 of the Ports Ordinance (Chapter 149).

The Official Assignee claims, not that the pension is vested in him by virtue of s. 24, sub-s. 4 and s. 47, sub-s. 1(b) (i) of the Bankruptcy Ordinance (Chapter 44) but that an order should be made under s. 55, sub-s. 3 of that Ordinance.

The only case to which I was referred was *In re Tan Hock Kee*, (1936) S.S.L.R. 92; (1936) 5 M.L.J. 154 and no argument was addressed to me by either side. The bankrupt was not professionally represented.

It has been held by Shaw C.J. in *In re R. E. Smith deceased. Muthucarpen Chitty* v. *B. K. Smith*, (1936) S.S.L.R. 12; (1936) 5 M.L.J. 83 that "payments or other allowances" in what is now s 20, sub-s. 2 of the Municipal Ordinance are the amounts which the officer or his estate is entitled to receive from the trustees of the Provident Fund up to the time the money is paid over to the officer and that the section only protects the money before it comes into the officer's possession.

The decision of Sir Walter Shaw was affirmed by the Court of Appeal. If s. 20, sub-s. 2 is not confined to money while in the hands of the trustees of the Provident Fund, there would appear to be no purpose in sub-s. 3 which appears to me absolutely to protect such money after it has been paid out subsequent to the death of the employee.

The absence of such absolute protection in s. 19 of the Pensions Ordinance is noticeable.

The moneys payable under the Sultan Hussain Ordinance are not called pensions but they are analogous to pensions and they shall be paid in such manner and in such proportions as the Governor in Council determines.

Apart altogether from the Ordinance it cannot be attached by ordinary civil procedure in the hands of the Crown before it is paid out, at any rate without the consent of a senior Crown Officer. R.S.C. XLI r. 4(2), the Courts Ordinance s. 13, sub-s. 1(d).

Section 13 of the Courts Ordinance and s. 15 of the Pensions Ordinance speak of a pension "granted" not of a pension paid, so those sections do not suffice to protect the pension after it has come into the hands of the pensioner.

Section 5 of the Sultan Hussain Ordinance exempts sums "payable" and this clearly indicates that the section applies only to sums not yet paid by the Government; so what is exempted is money still in the hands of the Government.

The section so far as it relates to attachment, sequestration and levying may be superfluous but does not protect the money once it has been paid over.

It would be absurd to say that a pension when paid cannot be attached in the absence of the clearest legislative provision. Otherwise a pensioner could get credit and the money in his pocket would be protected against his creditor.

I have no doubt that an order could be made directing the bankrupt to pay such sum as the Court thought proper out of each payment she received. This was the course followed in *Hollinshead* v. *Hazleton*, (1916) A.C. 428; 2 Han. Co. & Wg. Up. C. 85 and, I gather in *In re Saunders*, (1895) 2 Q.B. 428 which related to an Indian pension.

In my opinion s. 5 of the Sultan Hussain Ordinance has no application in bankruptcy. The purport of that section is illustrated by *Lucas* v. *Harris*, 18 Q.B.D. 117 as explained in *In re Saunders*. The appropriation of unpaid government pensions for the payment of a bankrupt's debts is regulated by s. 55, sub-s. 3 of the Bankruptcy Ordinance. I have power to make an order under that section directing that a portion of the money payable by the Government to the bankrupt be paid to the Official Assignee for the benefit of the bankrupt's creditors, because the money is not a mere gratuity as in *In re Wicks*, 17 Ch.D. 70.

Section 55, sub-s. 2 has no application to pensions so consent is not necessary for the Court's order under sub-s. 3.

It is advisable, however, that the Court be informed by the Treasury of the exact amount payable to the bankrupt for her own benefit. I have consulted the Treasury and am informed that $264 is payable to her every month. Of this sum the Colony pays $144 and Johore $120. The bankrupt admits she receives this $264 per month. She supports five small children and an aged aunt. Having regard to this lady's station in life and to her age she will probably find it difficult to economise, but I have no doubt that economies can be effected.

I direct the Accountant-General of the Straits Settlements to pay to the Official Assignee, Singapore for the benefit of the bankrupt's creditors the sum of thirty dollars ($30) per month out of the sum payable each month to Tengku Zainab binte Sultan Ali under the Sultan Hussain Ordinance.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

November, 21, 1938.

IN RE THE ESTATE OF KHOO KHYE CHEAR DECEASED.

ROBERT CECIL RUSSELL v. KHOO BOC BOON AND OTHERS.

[PENANG ORIGINATING SUMMONS No. 108 of 1938]

Will — Construction — Whether "my male issue" includes adopted children and their issue —Wills Ordinance (Chapter 53), s. 27.

In interpreting Chinese Wills in this colony the words "children" and "sons" have in some cases been held to apply to adopted children and adopted sons, where such an intention on the part of the testator was indicated. The same principles cannot be extended to the interpretation of the language of an Ordinance and accordingly adopted children cannot be included in the words "child or other issue of the testator" in s. 27 of the Wills Ordinance.

Also held, upon the construction of the will before the Court that the words "my male issue" used in connection with the bequest of a house and furniture meant the legitimate male descendants of the testator living at the date of his death.

The testator by his will bequeathed unto his wife Ang Guan Neoh during her life "my house No. 62 Love Lane free from incumbrances with the furniture therein contained" &c. Evidence was given to the Court that the testator had never owned No. 62 Love Lane but that he did own No. 62 Muntri Street and that the same Chinese characters were used both for Love Lane and Muntri Street.

Held, that the land and premises No. 62 Muntri Street and the furniture therein passed under the gift in the Will of No. 62 Love Lane with the furniture therein.

ADJOURNED SUMMONS.

R. D. Hume for plaintiff.

N. Raghavan for the Registrar appointed to represent the Estate of Khoo Boo Keng deceased.

Lim Cheng Ean for second defendant representing the class of male children of the testator.

Cur. Adv. Vult.

HORNE, J.—*Prayer 1.* On this prayer in view of the evidence given before me by the Court Chinese Interpreter, Martinez Chan, that amongst the Chinese, the name by which they speak of Love Lane or Muntri Street is the same; and having regard to the fact that the testator never lived at No. 62 Love Lane, but did live at and owned No. 62, Muntri Street, which was conveyed to him on the 28th October 1897, (the day before the Will was made) I am satisfied that the bequest (sic) of the house "No. 62, Love Lane with the furniture therein contained" is one and the same property as No. 62, Muntri Street, Penang.

I therefore hold that the land and premises No. 62, Muntri Street, Penang, and the furniture therein, passes under the "bequest" in the will of No. 62, Love Lane with the furniture therein.